

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAMES DAVID McCLAIN,

Case No. 3:14-cv-00269-MMD-CLB

Petitioner,

ORDER

v.

PERRY RUSSELL, *et al.*,

Respondents.

In this represented habeas matter under 28 U.S.C. § 2254, Petitioner James McClain has filed in proper person a petition for a writ of *mandamus* (ECF No. 132 (“Petition)). In response, Respondents filed a motion to strike the Petition. (ECF No. 133.)

In the Petition, McClain expresses a concern that “there have been no charges filed within the 30 day time frame as ordered” in the Court’s March 18, 2021, judgment herein. (See ECF No. 130.) Review of the record reflects that Respondents filed a notice of intent to retry (or try) McClain on March 30, 2021, within the 30-day time period provided in the Court’s judgment for that election. (ECF No. 131.) The attachment filed with the notice reflected that on March 29, 2021, the state district court remanded the matter to the justice court for a preliminary hearing. (ECF No. 131-1.) Under the judgment, the State of Nevada has 120 days from the filing of the federal notice, or until on or about July 28, 2021, to either commence jury selection in a trial or otherwise pursue the criminal matter through to a conclusion in the state district court without trial, subject to reasonable requests for modification of that time period by any party. (ECF No. 130.) Thus, it does not appear at least on the face of the federal record that the March 18, 2021 judgment is not being complied with and/or that action by the Court with respect to that judgment

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1 currently is required. The Court further notes that a party represented by counsel must
2 seek relief through counsel.


3 It is therefore ordered that McClain's petition for a writ of *mandamus* (ECF No. 132)
4 is denied without prejudice on the showing made and as an improper filing in proper
5 person.

6 It is further ordered that Respondents motion to strike (ECF No. 133) is denied
7 without prejudice.

8 It is further ordered that McClain's counsel, within 14 days of entry of this order,
9 will review the status of the federal and related state court proceedings and will consult
10 with McClain, together with any state court counsel for him if and as necessary, regarding:
11 (a) the status of the federal and state proceedings, including the status of any proceedings
12 directed toward trial and/or pending negotiations, if any, in the state court proceedings;
13 (b) the gist of this order; and (c) the fact that McClain still is represented in this federal
14 proceeding and thus can communicate with the Court only through counsel. The Court
15 leaves to McClain's counsel's discretion the specific manner of such consultation, given
16 any continuing limitations on inmate access and the short timeframe involved.

17 The Court further directs that Respondents' counsel seek to facilitate such
18 confidential consultation to the extent feasible, if requested by McClain's counsel.

19 DATED THIS 11th Day of June 2021.

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23 MIRANDA M. DU
24 CHIEF UNITED STATES DISTRICT JUDGE
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